

Testimony of Walter R. Schoettle
Reconciliation Hearings
Before
Hon. John Berry,
Asst. Sec'y of the Dept. of the Interior
and
Hon. Mark Van Norman,
Director of the Office of Tribal Justice
December 10 & 11, 1999
at Honolulu, Hawaii

My name is Walter R. Schoettle. I am an attorney and represent The Hou Hawaiian, a native Hawaiian tribal *ohana*.

In 1921, Congress enacted the Hawaiian Homes Commission Act to provide 99-year leasehold homesteads for native Hawaiians. In 1959, Hawaii was admitted to the Union upon the conditions of the compact and trust contained in §§ 4 and 5(f) of the Hawaii Admissions Act that the Hawaiian Homes Commission Act be adopted as part of the State Constitution.

After 21 years of statehood very little had been done by the State to provide native Hawaiians with homesteads. Much of the more valuable land set aside by Congress for homesteads was being used by the State for other purposes or was being leased to nonbeneficiaries. On October 31, 1980, The Hou Hawaiians filed a suit in the United States District Court for the District of Columbia (Civil No. 80-2794) seeking to compel the United States to bring an action against the State of Hawaii to enforce the HHCA, as provided by § 5(f) of the Admissions Act.

Secretary of the Dept. of the Interior Andrus acknowledged that the State had violated HHCA in a number of respects and that the United States had been remiss in its obligation to enforce the Act. In view of the United States' failure to provide oversight, it was proposed that the State of Hawaii be given a reasonable opportunity to correct the past violations and come into compliance with the Act. As a result, on July 14, 1982, the Federal-State Task Force on the Hawaiian Homes Commission Act was formed and the lawsuit was dismissed.

One year later, the Task Force released its final report. *Federal-State Task Force on the Hawaiian Homes Commission Act Report to United States Secretary of the Interior and the Governor of the State of Hawaii*, Honolulu, Hawaii, August, 1983. The report documented some of the breaches of trust on the part of the State and made suggestions for future cooperation between the State and Federal governments in implementing the Act.

The reaction of the United States to the report was negative. On October 27, 1986, President Reagan announced the policy of his administration was that the § 4 compact was unconstitutional, that federal oversight should be terminated and that implementation of HHCA should be left solely to the discretion of the State of Hawaii. *Public Papers of the Presidents, Ronald Reagan, 1986*, p. 1456 (1989). This policy was continued under the Bush administration. *Hawaiian Homes Commission Act*, S. Hrg. 102-633, p. 457 (Feb. 6, 1992).

After waiting in vain for their homesteads for another 17 years, on April 8, 1997, The Hou Hawaiians filed another suit, in the United States District Court for the District of Hawaii (Civil No. 97-00303HG), seeking to compel the State to provide homesteads and to compel Secretary Babbitt and Attorney General Reno to enforce the trust and Act. Instead of supporting the beneficiaries in their attempt to enforce the trust, the Secretary and Attorney General joined the State in arguing that the defendants are immune from suit. The Court agreed with the defendants and dismissed the suit.

. On appeal to the Ninth Circuit Court of Appeals, the court held that the State has the discretion not to provide homesteads and OHA has the discretion to determine qualifications for homesteads.

As a result, OHA continues to hoard hundreds of millions of dollars in proceeds from the § 5(f) trust, which it is required by law to use for the betterment of the condition of native Hawaiians. The State continues to use hundreds of millions of income from the § 5(f) trust for purposes other than providing homesteads for native Hawaiians.

The United States is doing nothing to enforce the § 4 compact and the § 5(f) trust. Instead, the United States has aided and abetted the State in denying the beneficiaries a judicial remedy for breach of trust.

All of this is more fully described in the Petition for Certiorari two copies of which are being submitted herewith.

I also support the Hou in their attempt to gain recognition from the United States government as an Indian tribe. This is covered in the separate testimony of Chief Maui Loa.

Respectfully submitted,

Walter R. Schoettle
P. O. Box 596
Honolulu, Hawaii 96809
(808) 537-3514

After waiting in vain for their homesteads for another 17 years, on April 8, 1997, The Hou Hawaiians filed another suit, in the United States District Court for the District of Hawaii (Civil No. 97-00303HG), seeking to compel the State to provide homesteads and to compel Secretary Babbitt and Attorney General Reno to enforce the trust and Act. Instead of supporting the beneficiaries in their attempt to enforce the trust, the Secretary and Attorney General joined the State in arguing that the defendants are immune from suit. The Court agreed with the defendants and dismissed the suit.

. On appeal to the Ninth Circuit Court of Appeals, the court held that the State has the discretion not to provide homesteads and OHA has the discretion to determine qualifications for homesteads.

As a result, OHA continues to hoard hundreds of millions of dollars in proceeds from the § 5(f) trust, which it is required by law to use for the betterment of the condition of native Hawaiians. The State continues to use hundreds of millions of income from the § 5(f) trust for purposes other than providing homesteads for native Hawaiians.

The United States is doing nothing to enforce the § 4 compact and the § 5(f) trust. Instead, the United States has aided and abetted the State in denying the beneficiaries a judicial remedy for breach of trust.

All of this is more fully described in the Petition for Certiorari two copies of which are being submitted herewith.

I also support the Hou in their attempt to gain recognition from the United States government as an Indian tribe. This is covered in the separate testimony of Chief Maui Loa.

Respectfully submitted,

Walter R. Schoettle
P. O. Box 596
Honolulu, Hawaii 96809
(808) 537-3514

After waiting in vain for their homesteads for another 17 years, on April 8, 1997, The Hou Hawaiians filed another suit, in the United States District Court for the District of Hawaii (Civil No. 97-00303HG), seeking to compel the State to provide homesteads and to compel Secretary Babbitt and Attorney General Reno to enforce the trust and Act. Instead of supporting the beneficiaries in their attempt to enforce the trust, the Secretary and Attorney General joined the State in arguing that the defendants are immune from suit. The Court agreed with the defendants and dismissed the suit.

. On appeal to the Ninth Circuit Court of Appeals, the court held that the State has the discretion not to provide homesteads and OHA has the discretion to determine qualifications for homesteads.

As a result, OHA continues to hoard hundreds of millions of dollars in proceeds from the § 5(f) trust, which it is required by law to use for the betterment of the condition of native Hawaiians. The State continues to use hundreds of millions of income from the § 5(f) trust for purposes other than providing homesteads for native Hawaiians.

The United States is doing nothing to enforce the § 4 compact and the § 5(f) trust. Instead, the United States has aided and abetted the State in denying the beneficiaries a judicial remedy for breach of trust.

All of this is more fully described in the Petition for Certiorari two copies of which are being submitted herewith.

I also support the Hou in their attempt to gain recognition from the United States government as an Indian tribe. This is covered in the separate testimony of Chief Maui Loa.

Respectfully submitted,

Walter R. Schoettle
P. O. Box 596
Honolulu, Hawaii 96809
(808) 537-3514

After waiting in vain for their homesteads for another 17 years, on April 8, 1997, The Hou Hawaiians filed another suit, in the United States District Court for the District of Hawaii (Civil No. 97-00303HG), seeking to compel the State to provide homesteads and to compel Secretary Babbitt and Attorney General Reno to enforce the trust and Act. Instead of supporting the beneficiaries in their attempt to enforce the trust, the Secretary and Attorney General joined the State in arguing that the defendants are immune from suit. The Court agreed with the defendants and dismissed the suit.

. On appeal to the Ninth Circuit Court of Appeals, the court held that the State has the discretion not to provide homesteads and OHA has the discretion to determine qualifications for homesteads.

As a result, OHA continues to hoard hundreds of millions of dollars in proceeds from the § 5(f) trust, which it is required by law to use for the betterment of the condition of native Hawaiians. The State continues to use hundreds of millions of income from the § 5(f) trust for purposes other than providing homesteads for native Hawaiians.

The United States is doing nothing to enforce the § 4 compact and the § 5(f) trust. Instead, the United States has aided and abetted the State in denying the beneficiaries a judicial remedy for breach of trust.

All of this is more fully described in the Petition for Certiorari two copies of which are being submitted herewith.

I also support the Hou in their attempt to gain recognition from the United States government as an Indian tribe. This is covered in the separate testimony of Chief Maui Loa.

Respectfully submitted,

Walter R. Schoettle
P. O. Box 596
Honolulu, Hawaii 96809
(808) 537-3514